



Cass County
Planning Commission/Board of Adjustment

November 14, 2016

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting November 14, 2016 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted November 7, 2016, with PC members Froehlig, Kostial, LaPorte, Pehling and Sundberg along with ESD staff Berg, and Fairbanks in attendance.

Kostial called the meeting to order at 9:30 a.m.

Members present: Fitch, Kostial, LaPorte, Moore, and Pehling.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Mary Albachten, Brad Busbey, Diane Cegla, Jim Cegla, Gary Ewald, Bill Gehrman, Robert Hollister, Robin Hollister, Karen Kaehler, Brian Kirkpatrick, Jack Levene, Pat Levene, Nancy Loren, Troy Loren, Tenlee Lund, Tom Lund, Bob Ostlund, Kathy Ostlund, Jeff Peterson, Dori Sletten, Jim Sletten, Kathy Wagner and Ron Wickham.

MS/P Pehling/Fitch to approve the minutes of the 10/14/16 PC/BOA meeting as presented.

Variance

Cegla, James & Diane, Crooked Lake Township on property described as Lot 1, "Plat of Part of the Outlot A of O'Brien's Plat On Roosevelt and Lawrence Lakes", Section 26-139-26, PID #12-478-0010 located at 553 65th Avenue NE. An application submitted to replace the existing nonconforming residence with a new 28 feet x 36 feet residence and 12 feet x 14 feet screened porch to be located 17 feet from the lake and 8 feet from 65th Avenue NE. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Sections 1115.3 which establishes the nonconforming lot and structure criteria and requirements, Section 1126.1 A. which requires structures to be located 75 feet from a lake classified General Development (GD) and Section 1126.1 B. which requires structures to be located 20 feet from the right-of-way of a public/platted road. The property contains .2 acre riparian to Lake Roosevelt (GD).

PC members were at the site 11/07/16. 63 notices of the application were mailed with no responses received. The application was reviewed and discussed with Diane and James Cegla.

MS/P Fitch/LaPorte to approve the application to construct a residence as submitted for size, configuration and location at PID #12-478-0010 upon review of the criteria contained in Sections 800 and 1126.1 A. of the Land Use Ordinance along with M.S. 394.27, Subd. 7 with the following findings and conditions:

Findings:

1. The property was platted in 1953 and contains .2 acre.
2. The platted depth of the lot from water to right-of-way is 64 feet and 80 feet.
3. There is no record in the permit archive for the construction of the existing residential structure and it appears that it predates land use regulation.
4. The proposed new structure will result in a modest expanded footprint from 883 square feet to 1,176 square feet.
5. There is nothing to indicate that the location and size of the proposed structure, based upon lot size, will alter, disturb or negatively impact existing land use or neighboring property which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
6. There is nothing to indicate that the application is solely financially based.
7. The application, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
8. The application, if approved and assuming compliance with applicable run-off related standards or conditions will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
9. The application, if approved, will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The location, configuration and dimensions of the residential structure shall not vary from that submitted 10/11/16 unless approved by ESD or if necessary the Planning Commission.
2. The applicant shall comply with the recommendation of the Shoreline Rapid Assessment and if enhancement or mitigation is determined necessary, the applicant shall submit financial

assurance to the County in the amount determined by ESD in the form of a Letter of Credit or cash which shall be reduced incrementally as determined and approved by ESD.

3. ESD shall determine and if required, the applicant shall install construction erosion control.
4. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
5. Any material from demolition and construction not reused or recycled must be disposed of in a permitted facility.
6. The applicants have voluntarily offered and will remove the existing accessory storage structure and treehouse located near the lake.
7. The applicant must obtain a Shoreland Alteration Permit for the proposed retaining wall.
8. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
9. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Hollister, Robin, Sylvan Township on property described as Part of S $\frac{1}{2}$ of NW & Part of SW $\frac{1}{4}$, Section 7-133-29, PID #41-107-3300 located at 12661 Upper Sylvan Road SW. An application submitted to expand an existing guest quarters structure which contains 772 square feet with a 16 feet x 20 feet addition. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1126.5 A.3. which limits the size of a guest quarters structure to 700 square feet. The property contains 110.34 acres riparian to Hole in the Day Lake (NE) and Rudbeck Lake (NE).

PC members were at the site 11/07/16. 51 notices of the application were mailed. One response, from Sylvan Township, recommending approval of the application was received. The application was reviewed and discussed with Robert and Robin Hollister.

MS/P Pehling/LaPorte to allow guest quarters residence located at PID #41-107-3300 to exceed 700 square feet upon review of the criteria contained in Section 800, Section 1126.5 A. 3. of the Land Use Ordinance along with M.S. 394.27, Subd. 7 with the following findings and conditions:

Findings:

1. The property contains 110 acres and is riparian to Hole in the Day Lake (NE) and Rudbeck Lake (NE).
2. The riparian standard for guest quarters footprint is not to exceed 700 square feet.

3. According to Assessor's Department parcel drawing the footprint of the existing structure to be utilized for the guest quarters is 1,124 square feet.
4. The application calls for a 16 feet x 20 feet expansion.
5. The structure is non-riparian and well screened from Upper Sylvan Road.
6. Based upon the size of the structure along with its location, topography and size of the property, there is nothing to establish that the structure as expanded will alter, disturb or negatively impact existing land use or neighboring property which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
7. Structure size and use in this situation does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
8. There is nothing to indicate that the application is solely financially based.
9. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
10. Approval assuming compliance with applicable run-off related conditions will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The location, configuration and dimensions of the structure expansion shall not vary from that submitted 10/11/16 unless approved by ESD or if necessary the Planning Commission.
2. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
3. Any material from demolition and construction not reused or recycled must be disposed of in a permitted facility.
4. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.

5. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Karbowski, Robert, Unorganized #5 on property described as Part of W $\frac{1}{2}$ of Govt Lot 9, Section 34-146-29, PID #75-034-4306 located at 987 River Drive NW. An application submitted to divide the existing parcel into two lots that would contain less than the required minimum lot size. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section F.1. of the Mississippi Headwater Management Plan which requires a new lot in the corridor designated Wild (W) to contain not less than 10 acres. The corridor designated as Wild (W) is that area with 1,000 feet of the Mississippi River. The property contains 1.86 acres non-riparian within the Mississippi Headwaters Corridor (W).

PC members were at the site 11/07/16. 13 notices of the application were mailed with no responses received. The application was reviewed and discussed with Mr. Karbowski.

MS/P Fitch/Pehling to approve the application to allow for the division of PID #75-034-4306 as proposed upon review of the criteria contained in Section 800 of the Land Use Ordinance along and M.S. 394.27, Subd. 7 with the following findings and conditions:

Findings:

1. The lot became of record in 1975.
2. The applicant became owner in 1975.
3. The lot is non-riparian.
4. The lot is 200 - 250 feet from the river.
5. The lot is across a platted road from "Ted's Subdivision" which was platted in 1949 and contains 9 lots each of .5 acre or less.
6. The property is occupied by two residential structures and two SSTs.
7. There is no record in the permit archive to determine when the structures were constructed.
8. The MHMP was adopted in 1980.
9. The area of consideration contains .0009 of the total area of T146N * R29W (Unorganized #5).
10. Based upon the existing neighborhood which consists of similar small residential lots and taking into account the distance to the river, there is nothing to indicate that the proposed parcel division will alter, disturb or negatively impact existing land use or neighboring property or negatively affect the river which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a

rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.

11. The proposed lot division will not alter the existing configuration or view of the property to the neighboring area.
12. The property is not visible from the river.
13. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
14. The degree of impact to the area, land use and the river will be imperceptible if any and the County's benefits are outweighed by the applicant's burden if the applicant were required to comply with the MHMP.
15. Approval will not result in an increase of the existing small lot density of the immediate locale.
16. Approval will not result in an increase in access and use of the river.
17. In light of all factors, the interest of justice is served by granting the application.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The configuration of the new lots shall not vary from that submitted 10/12/16 unless approved by ESD or if necessary the Planning Commission.
2. The applicant shall obtain a compliance inspection for each SSTS
3. The boundary between the new lots must be surveyed.
4. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Levene, Jack & Pat, Crooked Lake Township on property described as Lots 5 & 6, "O'Brien's Plat of Outlot "A" of O'Brien's Plat on Roosevelt and Lawrence Lakes", Section 26-139-26, PID #12-477-0051 located at 559 65th Avenue NE. An application submitted to remove the existing nonconforming residence and replace with new 32 feet x 40 feet residence to be located 25 feet from the lake at the closest point. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1126.1 A. which requires

structure to be located 75 feet from a lake classified General Development (GD). The property contains .5 acre riparian to Lake Roosevelt (GD).

PC members were at the site 11/07/16. 63 notices of the application were mailed with two responses both opposed to approval received. The application was reviewed and discussed with Pat and Jack Levene.

MS/P LaPorte/Fitch to approve the application for the size and location for the residential structure to be located upon PID #12-477-0051 upon review of the criteria contained in Sections 800, 1115.3 and 1126.1 B. of the Land Use Ordinance along with M.S. 394.27 Subd. 7 with the following findings and conditions:

Findings:

1. The property was platted in 1953 and contains .5 acre.
2. The lot does not comply with current lot minimum standards.
3. The property varies in depth from the lake to the road from 80 - 168 feet which based upon 75 feet setback from lake and 20 feet setback from right-of-way upon one half acre severely limits placement options.
4. There is no record in the permit archive dating the construction of the residence.
5. An application for variance in 1978 shows the residence and garage in place.
6. The new structure will be no closer to the lake than the structure to be replaced.
7. The proposed location of the new residence seems a reasonable response to the practical difficulty posed when taking into account the size and configuration of the lot which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare and does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
8. There is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed tank and treatment area locations.
9. There is no reason to conclude that water quality will be in any way affected.
10. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of a land use permit. Commencement of either prior to issuance of a land use permit may result in withholding, withdrawal or revocation until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The location and size of the residence shall not vary from that submitted 10/18/16 unless approved by ESD or if necessary the Planning Commission.
2. The structure shall not be less than 49 feet from the lake at any point which shall be verified by ESD prior to construction.
3. The applicant shall comply with the recommendation of the Shoreline Rapid Assessment and if enhancement or mitigation is determined necessary, the applicant shall submit financial assurance to the County in the amount determined by ESD in the form of a Letter of Credit or cash which shall be reduced incrementally as determined and approved by ESD.
4. The applicant shall install construction erosion control as determined by ESD.
5. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
6. Any material from demolition and construction not reused or recycled must be disposed of in a permitted facility.
7. The applicants have voluntarily offered and will remove the existing boathouse.
8. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
9. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Ostlund, Robert J, Shingobee Township on property described as Part of Govt Lot 1, Section 35-142-31, PID #38-135-1218 located at 5300 Ladyslipper Lane NW. An application submitted "after the fact" to be allowed to retain shoreland setback zone excavation that exceeds the maximum allowed by SA15-142-31-5 of not more than 50 cubic yards and that exceeds the maximum width of 20 feet. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1106.2 A. which limits excavation within the shoreland setback zone to not more than 50 cubic yards and no more than 20 feet wide. The property contains 1.03 acre riparian to Leech Lake (GD). Consideration of this application was tabled during the 09/12/16 meeting in order for the applicant to submit a revised mitigation plan.

The PC was at the site 10/03/16 and 11/07/16. 40 notices of the application were mailed with no response received. The application was reviewed and discussed with Kathy and Robert Ostlund.

MS/P Moore/Fitch to allow the existing constructed access from the residence to the lake at PID #38-135-1218 to remain in place upon review of the criteria contained in Sections 800,

1115.3 and 1126.1 B. of the Land Use Ordinance, M.S. 394.27 Subd. 7 and the "Statsvold Decision" with the following findings and conditions:

Findings:

1. The area altered from the residence to the lake exceeds 20 feet in width.
2. The area excavated from the residence to the lake including rock placement exceeds 50 cubic yards.
3. The shoreland alteration project approved by SA15-142-31-5 bears little resemblance to the project completed.
4. The initial site plan submitted with the application for SA15-142-31-5 is at best rudimentary and lacking in detail and should have been rejected.
5. It seems at best that restoration to permit limits would cause more harm than good.
6. The practical difficulty here is to mitigate the location and size of the permit exceedance so as to not alter, disturb or negatively impact existing land use or neighboring property which will maintain a fragile connection to the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
7. There is nothing to indicate that the application is solely financially based.
8. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
9. Approval, assuming compliance with applicable run-off related conditions, will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
10. Approval will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.
11. ESD has reviewed and approved the Shoreline Creations vegetative/landscape plan dated 10/12/16 for implementation

"Statsvold" - After the Fact Findings:

1. There is nothing to indicate or anyway to determine that the applicant or contractor did not act in good faith when the shoreland alteration activity took place.
2. There is nothing to indicate or anyway to determine if the applicant or contractor inquired as to permit and placement limits for the shoreland alteration.
3. A casual observer would conclude that the construction required substantial investment.
4. Construction has been completed.
5. There are similar the shoreland alterations along Leech Lake and throughout the county.
6. The degree of impact of the shoreland alteration to the area and the land use system is not significant and the County's benefits by obtaining a variance to the shoreland standards are

outweighed by the applicant's burden if the applicant were required to comply with the ordinance and in light of all factors, the interest of justice is served by granting the ATF variance.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The applicant shall implement the vegetative/landscape plan submitted by Shoreline Creations dated 10/12/16 by 06/30/17.
2. The vegetative/landscape plan shall not vary from that dated 10/12/16 unless approved by ESD or if necessary the Planning Commission.
3. The applicant shall submit financial assurance to the County in the amount of \$5,000 in the form of a Letter of Credit or cash which shall be reduced incrementally as determined and approved by ESD.
4. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
5. There shall be no mowing in the area designated "E" on the Shoreline Creations site plan.
6. ESD shall evaluate the need for additional run-off collection structures including guttering, berms, rain gardens and similar structures that the applicants shall implement if determined necessary.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Sletten, James & Dorilyn, Woodrow Township on property described as Part of Govt Lot 2, Section 35-140-29, PID #51-035-2303 located at 2710 Blackwater Road NW. An application submitted to expand the existing 24 feet x 40 feet nonconforming residence, 29 feet from the lake, with a 14 feet x 30 feet addition, an 8 feet x 10 feet addition, a 6 feet x 18 feet addition, an 8 feet x 14 feet deck and 4 feet x 20 feet deck/walkway. All expansion would not increase the current lake setback encroachment. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Sections 1115.3 which establishes the nonconforming lot and structure criteria and requirements and Section 1126.1 A. which requires structures to be located 100 feet from a lake classified Recreational Development (RD). The property contains .8 acre riparian to Blackwater Lake (RD).

PC members were at the site 11/07/16. 30 notices of the application were mailed. Four responses, three favoring approval and one opposed to approval were received. The application was reviewed and discussed with Dori and James Sletten.

MS/P LaPorte/Pehling to approve the application to expand the nonconforming residence located at PID #51-035-1218 upon review of the criteria contained in Sections 800, 1115.3 and 1126.1 A. of the Land Use Ordinance along with M.S. 394.27 Subd. 7 with the following findings and conditions:

Findings:

1. There is nothing in the permit archive to determine when the residence was constructed at less than 100 feet from the lake.
2. None of the expansion to the residence, including deck, will be closer to the lake than the existing setback.
3. The location and configuration of the residence represents a practical difficulty to expansion which will be mostly not visible from the lake and which there is nothing to indicate that the increased size will alter, disturb or negatively impact existing land use or neighboring property which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation and in addition, does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
4. There is nothing to indicate that the application is solely financially based.
5. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
6. Approval, assuming compliance with applicable run-off related conditions, will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
7. Approval will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of

financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The size and location of the residence and deck expansion shall not vary from that submitted 09/30/16 unless approved by ESD or if necessary the Planning Commission.
2. ESD must determine and if required, the applicant shall install construction erosion control.
3. The applicant shall comply with the recommendation of the Shoreline Rapid Assessment and if enhancement or mitigation is determined necessary, the applicant shall submit final assurance to the County in the amount determined by ESD in the form of a Letter of Credit or cash which shall be reduced incrementally as determined and approved by ESD.
4. No run-off to adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
5. Any material resulting from demolition and construction not reused or recycled must be disposed of in a permitted facility.
6. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
7. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
8. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Wenner, Bruce & Heidi, Shingobee Township on property described as Lot 4 & 1/22 Interest in Outlot A, "The Country", Section 30-141-30, PID #38-449-0120 located at 5407 Elderberry Lane NW. An application submitted to construct a 26 feet x 32 feet accessory structure/garage within the bluff impact zone which is the area within 30 feet of the top or toe of a bluff. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1126.1 B. which requires structures to be located 30 feet from the top or toe of a bluff. The property contains .9 acre riparian to Howard Lake (RD).

PC members were at the site 11/07/16. 34 notices of the application were mailed with no response received. The application was reviewed and discussed with Mr. Wenner.

MS/P LaPorte/Pehling to approve the application as submitted to construct an accessory structure/garage at closer bluff setback upon PID #38-449-0120 upon review of the criteria

contained in Sections 800 of the Land Use Ordinance along with M.S. 394.27 Subd. 7 with the following findings and conditions:

Findings:

1. "The Country" was platted in 1978 prior to the adoption of bluff criteria standards.
2. There is nothing in the permit archive to determine when the residence located on the property was constructed.
3. The lot is non-riparian and the proposed location for the accessory structure/garage is more than 100 feet from the lake.
4. The location of the residence along with the configuration and topography of the lot creates practical difficulty to locating the accessory structure/garage to which there is nothing to indicate that the size and location of the accessory structure/garage will alter, disturb or negatively impact existing land use or neighboring property which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
5. There is nothing to indicate that the application is solely financially based.
6. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
7. Approval, assuming compliance with applicable run-off related conditions, will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
8. Approval will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The size and location of the accessory structure/garage shall not vary from that submitted 10/19/16 unless approved by ESD or if necessary the Planning Commission.
2. ESD must determine and if required, the applicant shall install construction erosion control.

3. No run-off to adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
4. Any material resulting from construction not reused or recycled must be disposed of in a permitted facility.
5. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
6. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 11/14/18.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Conditional Use Permit

Loren Properties LLC, Wabedo Township on property described as Part of Government Lot 5, Section 23-140-28, PID #46-023-3405 located at 1650 Wabedo Frontage Road NE. An application submitted to reclassify the property from Shoreland Residential (SR) to Water Oriented Commercial (WOC) and restore the property to its use as a resort both of which require approval by conditional use permit (CUP). The relevant portions of the Land Use Ordinance include Section 705 which establishes the CUP criteria, Section 903 which describes the use categories and Section 1001 which establishes land use district requirements, Section 1001 which establishes the land use table which indicates that a CUP is required for a resort within the Water Oriented Commercial (WOC) and Section 1104.9 which establishes resort criteria. The property contains 4.3 acres riparian to Lake Wabedo (RD) (SR).

The PC was at the site 11/07/16. 32 notices of the application were mailed. Eight responses opposed to approval of the application along with seven responses, including Wabedo Township supporting approval of the application were received. The application was reviewed and discussed with Nancy and Troy Loren.

MS/P Fitch/LaPorte to approve a conditional use permit for reclassification and resort operation for PID #46-023-3405 upon review of the criteria contained in Sections 705, 903 and 1001 and 1104.7 of the Land Use Ordinance along with M.S. 394.301 with the following findings and conditions:

Findings:

1. Section 903.9, Water Oriented Commercial (WOC); "The purpose of this district is to accommodate commercial uses in the shoreland zone where access to and use of a surface water feature is an integral part of the business. Marinas, resorts and restaurants with transient docking facilities are examples of such use".

2. It is well established by the current property configuration and local history that the property was operated as a resort prior to and after the adoption of land use regulation.
3. Whether inadvertent or not, the property no longer carries the classification (WOC) necessary to operate a resort.
4. The resort section, 1104.9, revision did not consider such a scenario as presented (restoration of WOC classification for a previously operated resort).
5. If not reclassified to WOC the application cannot be considered as resort.
6. The existing activity seems not to be disruptive to the neighborhood.
7. There are no facts to indicate that there will be increased traffic from the re-establishment of resort activity which will result in detrimental effects to public health, safety or welfare.
8. There is no evidence to establish or indicate that the re-establishment of resort activity will have a detrimental effect to public health, safety or welfare by result of increased pedestrian traffic across Wabedo Frontage Road.
9. There is no evidence that the re-establishment of resort activity has or will alter or be detrimental to the residential land use in the area.
10. Re-establishment of resort activity will not increase the need or demand for governmental services.
11. The existing configuration complies with resort density standards.
12. There is no evidence or indication that the re-establishment of resort activity has or will increase degrade water quality from increased activity along or in the lake in this specific location.
13. There is nothing to indicate that the re-establishment of resort activity has or will contradict the purpose of the official controls, the Land Use Ordinance, which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and also to promote the health, safety, general welfare.
14. There is nothing to indicate that the re-establishment of resort activity has been or will be obtrusive and burdensome to the neighborhood which contradicts the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
15. No wetland or critical habitat is affected.
16. No scenic or historic features are affected.
17. The applicants, during the meeting, explained to the members their intention not to expand the number of resort units based upon existing allowable density other than possible construction of a residence for their use.

Conditions:

1. The applicants may, with permit, expand the existing resort unit bedrooms to comply with Minnesota Department of Health minimum square footage standards.
2. No run-off to the lake or to adjoining properties is permitted.

3. If necessary, the applicant shall abide by ESD recommendations for run-off shoreline vegetative management such as gutters to redirect storm water and water retention structures such as rain gardens to prevent run-off to the lake, the township road, and adjoining properties.
4. The applicant shall obtain and provide verification to ESD of all applicable State of Minnesota permits, licenses and approvals.
5. Parking on the lake side of Wabedo Frontage Road shall not exceed one vehicle per unit.
6. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS CUP, REMOVAL OF VIOLATIONS AND MITIGATION.

ANY EXPANSION FROM THE NUMBER OF RESORT UNITS INCLUDED IN THIS APPLICATION SHALL REQUIRE AN APPLICATION FOR AN AMENDED CUP AND SHALL BE EVALUATED ACCORDING TO THE CRITERIA CONTAINED IN SECTION 1104.9 L. 3. OF THE LAND USE ORDINANCE.

Hartman, Gary & Susan/Anderson Brothers Construction LLC, Pine River Township on property described as NE NE, Section 11-138-30, PID #31-011-1103 located at the SW corner of the junction of 4th Street SW and 28th Avenue SW. An application submitted to reclassify the property from Rural Residential - 2.5 (RR-2.5) to Rural Residential - 5 (RR-5) in order to establish an extractive use consisting of sand/gravel mining, crushing and storage both which require approval by a conditional use permit (CUP). The applicable sections of the Land Use Ordinance include Section 705 which establishes CUP standards, Section 900 which establishes land use districts, Section 1000 which establishes land use regulations and Section 1107 which establishes the extract use criteria and requirements. The property contains 40.18 (RR-2.5).

PC members were at the site 11/07/16. 30 notices of the application were mailed with no response received. The application was reviewed and discussed with Anderson Brothers representatives Brad Busbey and Ron Wickham.

MS/P LaPorte /Moore to approve the expansion as submitted for the extractive use located at PID #31-011-1103 upon review of the criteria contained in Sections 705 and 1107 of the Land Use Ordinance along with M.S. 394.301 with the following findings and conditions:

Findings:

1. It has been established that suitable sources of base material required to maintain and construct roads at all governmental levels must be available in adequate and economical quantities.
2. The area proposed for reclassification and the extractive use activity contains less than .001% of the total area of the township.

3. The proposed extractive use complies with Section 1104.9.
4. No wetland or critical habitats will be affected by the proposed land use activity.
5. No scenic or historic features will be affected by the proposed land use activity.
6. No evidence or information has been submitted to establish that the proposed land use will have a detrimental effect to public health, safety or welfare.
7. No evidence or information has been submitted to establish that the proposed land use activity has the potential to alter or be detrimental to land use in the general area.
8. Approval will not increase the need or demand for governmental services because no public road improvements are required and it does not require waste water treatment.
9. Approval will not contradict the purpose of the official controls, the Land Use Ordinance, which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and also to promote the health, safety, general welfare.
10. The proposed extractive use site is not adjacent to or observable from residential structures, public infrastructure or the public in general which therefore does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
11. The proposed site and operation does not rise to the threshold of a mandatory EAW.

Conditions:

1. The operation plans and specifications submitted with the application are adopted and approved for implementation and shall not be altered without review and approval of the Planning Commission.
2. The Site Development Plan and the Reclamation Plan submitted with the application are adopted and approved and shall not be altered without review and approval of the Planning Commission.
3. The Industrial Storm Water Pollution Plan is adopted and approved as submitted.
4. Financial assurance in an amount determined by Section 1107.1 B. shall be submitted to ESD in order to allow commencement of operations.
5. The applicant shall notify ESD of the dates and duration of all extractive use activity.
6. The applicant shall obtain and maintain all applicable MPCA permits.
7. The operation of the extractive use activity shall subscribe to and implement all applicable best management practices established in "A Handbook for Reclaiming Sand and Gravel Pits in Minnesota" published by the Minnesota DNR, July 1992.
8. Traffic control shall be operated so as to not create a safety hazard and to comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the US Department of Transportation, Federal Highway Administration, 2009 Edition.
9. No asphalt operations shall be conducted without the review and approval of the Planning Commission.
10. Unless revoked or otherwise revised by the Planning Commission this approval shall be effective as long as the site is used for the approved land use.

11. Dust control as contained and prescribed in the Plan for Operation must be observed and implemented at all times.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS CUP, REMOVAL OF VIOLATIONS AND MITIGATION.

Other Business

* Request received from Dianne Schafer to revise Condition #2 of VP16-139-26-8 which was approved 09/12/16 to increase bottom walk-out width from 10 feet to 16 feet.

MS/P LaPorte/Fitch to revise Condition #2 as requested from 10 feet to 16 feet conditional on the applicant complying with all ESD vegetative recommendations.

MS/P Fitch/Pehling at 12:32 PM, to adjourn.

P. Fairbanks